

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 305 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 : NO

MAIYUDDIN AHMEDBHAI MALEK

Versus

GULSAMBANU USMANBHAI MALEK

Appearance:

MR AU CHAUHAN for Petitioner

MR SR DIVETIA APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 19/06/98

ORAL JUDGEMENT

Mr. A.U Chauhan appearing for the petitioner is not present on call. Mr. Chauhan was not present in the first session also. Heard learned Addl. Public Prosecutor Mr. S.R Divetia. This application under section 397 of the Criminal Procedure Code has been preferred by the petitioner against the judgment and

order of the learned Addl. Sessions Judge, Mehsana passed in Criminal Revision Application No. 8 of 1997 on 30th April, 1997. Opponent No. 1 herein is wife of the petitioner who had made application being Criminal Misc. Application No. 171 of 1995 under Section 125 of the Criminal Procedure Code in the court of learned Judicial Magistrate First Class, Kalol. It was alleged that she was driven out from her matrimonial house and that the petitioner owns a manufacturing unit for rolling shutters and had monthly income of Rs. 5000/-. She, therefore, claimed monthly maintenance of Rs. 500/-. The learned trial Judge held that Opponent No. 1 was not earning and was residing with her brother and was entitled to maintenance from the petitioner. It was found that the petitioner and the Opponent No. 1 were married some more than 25 years ago and had 5 grown up children. The learned trial Judge believed the testimony of the petitioner and while considering his application to maintain other family members, awarded Opponent a monthly maintenance of Rs. 150/-. Feeling aggrieved, the Opponent no. 1 preferred Criminal Revision Application No. 8 of 1997 before the Sessions Court at Mehsana. The learned Addl. Sessions Judge relied upon the statement of the petitioner that he did manufacture rolling shutters and he manufactures some 4 to 5 rolling shutters every month, the learned Addl. Sessions Judge has concluded that the petitioner must be earning Rs. 5000/every month and enhanced monthly maintenance payable to Opponent no. 1 to Rs. 500/-.

It is pertinent to note that both the Courts below have observed that though the petitioner owns a manufacturing business and manufactures some 4 to 5 rolling shutters every month, he has not produced books of account or any other evidence which would reflect his income. I am, therefore, of the view that the learned Addl. Sessions Judge is right in concluding that the monthly income of the petitioner must be Rs. 5000/-. Considering the fact that children of the petitioner are all grown up and eldest of them is married for a long time, the obligation towards the family cannot be such which should deprive the opponent of just maintenance. The learned Addl. Sessions Judge is, therefore, right in awarding the monthly maintenance of Rs. 500/- to the Opponent No. 1. The impugned judgment and order of the learned Addl. Sessions Judge, therefore, does not warrant any interference. Petition is therefore summarily rejected. Notice is discharged.

Prakash*